

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS COUNTY OF NEWPORT

The Town Council of the Town of Tiverton, County and State aforesaid held a Special Meeting on Monday, the 21st day of July 2014 at 7:00 p.m. at the Tiverton High School Auditorium, 100 North Brayton Road.

1. PLEDGE OF ALLEGIANCE TO THE FLAG

Council President Roderick opened the Special Meeting with the Pledge of Allegiance to the Flag, then called the meeting to order at approximately 7:00 p.m.

2. ROLL CALL

Edward Roderick-President	Denise M. deMedeiros-Vice President	Joan B. Chabot
Jay J. Lambert	William P. Gerlach	
Brett N. Pelletier (late arrival)	James J. Arruda – Absent	

Town Administrator Matthew Wojcik and Town Solicitor Andrew Teitz were also present.

3. BUSINESS BROUGHT BEFORE THE COUNCIL

UNFINISHED BUSINESS

1. Street Advisory Committee Requests for Council to Proceed With Recommendations Regarding Beech Tree Hill and Daniel Church Estates – Continued From June 30 Meeting

a. Beech Tree Hill - Updated Recommendations of Street Advisory Committee

Jim O'Dell, Street Advisory Committee (SAC) member updated the Council. Beech Tree Hill (BTH) has formed a Homeowner's Association (HOA), filed in land evidence which was further requested of both subdivisions, prepared to recommend acceptance. DPW Director Steve Berlucchi explained to the Council the roads were in very good condition, finished when originally developed, went bankrupt. Worked with Bank5 to make sure up to plans and specs, went through the Planning Board process for acceptance of an HOA to assume responsibility for common land. Recommend acceptance as Town accepted roads. The DPW has been plowing and maintaining, streets include Rim Rock Court, Mt. Laurel Lane and Silver Beech Road. Councilor Gerlach questioned if Creamer Pond was to be included. Director Berlucchi noted that to be a separate and distinct issue. President Roderick called for comment from the public 3 times, seeing none opened to Council comments.

Solicitor Teitz suggested future HOA's also be filed with the Clerk's office, cross referenced in land evidence for a title search and articles of incorporation or chain of title. Make sure an annual copy of the report is filed with the Town Clerk. Town Clerk Mello suggested the acceptance be subject to that action and filing the annual report by June 30. David Spitz, President, Beech Tree Owners Association questioned what the process was, would there be notification? Solicitor Teitz explained it was Mr. Spitz responsibility to file the annual report with the Clerk's office each June, send a copy at the same time it is filed with the Secretary of State. Councilor Pelletier arrived at this time.

Councilor Gerlach made a motion, seconded by Councilor deMedeiros to accept the Street Advisory Committee request to proceed with acceptance the Beech Tree Hill subdivision subject to meeting all legal requirements and the filing of an annual Homeowners Association report by June 30th of each year with the Town Clerk. Motion passed on a vote of 6-0-1, Councilor Pelletier abstained, just arrived.

b. Daniel Church Estates - Updated Recommendations of Street Advisory Committee Back-up Documentation by Solicitor

Mr. O'Dell explained Daniel Church Estates (DCE) also filed a Homeowners Association recently with the Secretary of State's office with covenants and by laws. Request from the SAC to also have this filed in Land Evidence Records going forward. President Roderick requested clarification on the dam and the pond. Director

Berlucchi explained goes back 20 years contractor abandoned the project. Issue all along has been the pond; liability insurance. Originally by the developer used as drainage, recommend accepting. Storm water drainage within the roadway except anything off the roadway belongs to the HOA. Any off road drainage or sluice way, maintenance of the sluice way, Creamer Pond will not be the responsibility of the Town. Consists of 3 roads, Daniel T. Church Drive, Church Pond Road and Mallard Drive. Long time coming, at this time meets all the deed restrictions, recommend acceptance. Have rebuilt catch basins, roads in good shape, one crack across the road will repair as part of the patching process. President Roderick, regarding the pond and dam was concerned, even though the Town doesn't have responsibility worried if something should happen the Town will be liable. Solicitor Teitz shared those concerns, heard a topcoat was not put down. Director Berlucchi noted it looked like a topcoat.

Solicitor Teitz noted the responsibility of the drainage in the streets, DEM plans changed. Questioned if the Town has an as built plan that shows where the drainage is and what would be the responsibility of the HOA. Suggested before the Town takes action need to have plans that indicate where the drainage is. Was the Solicitor's position the HOA was jointly and severally responsible for the dam, obligation of the HOA documents originally created by the developer. The Solicitor has spoken to HOA President Lou Cabral, planning on getting liability insurance, hesitant to accept tonight. Had the dam collapsed in 2010, if the Town had not stepped in every homeowner would have been sued. Need to have more formally documented before accepting the roads. Suggest continuing for 90 days to October 27 to allow the HOA to get liability insurance. Mr. Cabral explained, finally have a consensus, have concerns about the drainage, the pond. Working with the Town on resolving these issues. In direct communication with DEM, understand what they are asking in terms of the pond, significant clean up, road access through a private property. A lot of owners did not know a dam was on the property, knew a stone wall with a berm was there. Working on getting cleaned up, oil separator cleaned annually. Councilor Gerlach supported continuance for 90 days, asked the SAC for periodic updates. Director Berlucchi affirmed services would continue.

Beth Ann Allcock, 1368 Main Road expressed concerns about the pond, family owns property on Main Road, gets flooded all the time, if pond overflows, what would be the recourse. Mr. Cabral was in contact with the State, said DEM was not concerned with the wall, wanted the pond cleaned out completely. Will prepare a comprehensive maintenance plan by a professional in coordination with the Town, working diligently to address these issues. Director Berlucchi was consistently maintaining, had a grate built, the dam is as low as it goes. The State will be building a new granite culvert, will help drainage immensely.

Councilor Gerlach made a motion, seconded by Councilor deMedeiros to continue to October 27, 2014 with periodic updates from the Street Advisory Committee regarding progress. Motion passed unanimously.

2. Newly Created Tiverton Wastewater District – Request Approval of Resolution Authorizing Transfer of Certain Assets of the Town

Leroy Kendricks, Tiverton Wastewater District, requested the transfer of assets resolution be approved by the Council so the newly formed Tiverton Wastewater District (TWD) can get funds. Solicitor Teitz had drawn up the agreement, the TWD attorney has reviewed. Councilor Pelletier questioned if only the physical assets. Solicitor Teitz explained this would transfer the physical and financial assets as well. The Resolution in item 3-3b is the clean copy, liabilities go with the district, as is where is, responsible for all. Certain funds in an account called 280 come in, go out. The Treasurer does the accounting for them, goes into a restricted account. The Town will transfer some operating funds right away, by September 15 transfer the remainder so no outstanding liabilities. Also CDBG funds would be transferred, will be accounted properly, cash would be transferred. Awarded funds, will assign our right. The resolution does authorize the Town Administrator and Town Treasurer to execute various documents. The Interceptor liability is a separate asset, liability of the pipe totally separate. While responsible for this would lease to TWD, responsible for monitoring, when paid off would transfer. There will be specific deals and leases through the resolution authorizing T/A Wojcik and Saurette to sign; have met with both to review. Mr. Kendricks noted the TWD would be moving office to 86 Main Road; expect to be out of Town space by mid-August.

Councilor Pelletier made a motion, seconded by Councilor Gerlach to approve the Resolution Authorizing the Transfer of Certain Assets of the Town to the Newly Created Tiverton Wastewater District. Motion passed unanimously.

Adopted Resolution attached at end of minutes.

3. Town Clerk – Discussion and Possible Vote to Open the Public Hearing Scheduled for July 28th on Proposed Ordinance for Licensing of Shooting Gallery and Continue to a Date Certain at Tiverton High School

Town Clerk Mello, for scheduling purposes, has received a lot of calls regarding the licensing of shooting galleries. Took the liberty of checking with the School Department on availability, contacted by the Rod & Gun Club which has a lot of members. If the Council is going to continue the public hearing anyway, may make sense to make public and set date now. Solicitor Teitz explained the Council would vote tonight that on July 28th they would open the public hearing and continue to a date certain. Has been advertised for Town Hall, will not fit more than 100 people. High School available the 4th and the 12th. The first time only 30 people showed up at the meeting which is why it was advertised for the Town Hall. Councilor Lambert noted the Fire Chief states people must have the right to come in at any time. Randy Lebeau, 22 Last Street, said he would call his people, tell them not to come. President Roderick noted people had the right to come can only suggest. Mr. Lebeau called the ordinance absurd will be there with his attorney. Discussion followed by Council on alternate dates, consensus was August 12. Solicitor Teitz will be away on vacation, had already arranged for Assistant Solicitor Gina DiCenso to be here on August 12. President Roderick requested the Clerk notify the Rod & Gun Club of the date and place.

Councilor Pelletier motioned to open the Public Hearing on July 28th regarding the Proposed Ordinance for Licensing of Shooting Gallery and continuing to a date certain at Tiverton High School on Tuesday, August 12th at 7:00 p.m. Seconded by Councilor deMedeiros discussion followed. Councilor deMedeiros citing Open Meeting Laws explained the Council had other business on that agenda, if more than 100 people were to show up at Monday's meeting would have to readvertise, be another 21 days. Solicitor Teitz opined it would have to be re-noticed could still continue as long as it was to a date certain. Councilor deMedeiros suggested opening this on Monday and then continuing. Solicitor Teitz noted the issue was about the people who would show up. Councilor deMedeiros suggested taking a chance. President Roderick preferred the High School, want as many as possible to speak.

Motion passed on a vote of 5-1, Councilor deMedeiros opposed.

4. ADJOURNMENT:

Councilor Gerlach motioned to adjourn, seconded by Councilor deMedeiros passed unanimously.

The Special Meeting adjourned at 8:05 p.m.

A True Copy.

ATTEST: _____

Nancy L. Mello, Town Clerk

TOWN OF TIVERTON
RESOLUTION AUTHORIZING
THE TRANSFER OF CERTAIN ASSETS OF THE TOWN
TO THE NEWLY CREATED TIVERTON WASTEWATER DISTRICT

WHEREAS, the Town of Tiverton (“Town”) has created, operated and maintained an off-site wastewater collection system, a/k/a sewer system, utilizing the Fall River sewage treatment plant, for several years providing sewer service to many residents of the Town; and

WHEREAS, the passage of Rhode Island's 2007 Cesspool Phase-Out Act set a timetable for the inspection and replacement of cesspools located within two hundred (200) feet of a coastal area, and these cesspools must be replaced by January 1, 2014, and this has proven to be cost prohibitive to numerous residents, and the act identifies an exemption which applies to cesspools located in areas to be sewered on or before January 1, 2020; and

WHEREAS, the Tiverton 2013 Wastewater Facilities Plan recommended creating a sewer district encompassing the existing and future sewer collection areas so that only properties located within the sewer district will be responsible for the costs of design, construction, and operation of the system; and

WHEREAS, the Rhode Island General Assembly passed the Tiverton Wastewater District Act (2014 H7801A and 2014 S2805) and the Governor signed such act into law on July 3, 2014, creating a new legal entity to be known as the Tiverton Wastewater District (“District”); and

WHEREAS, SECTION 16 of the Act, entitled “Transfer of assets and liabilities,” provides: “Upon the effective date of this act, the district shall acquire and take legal title to all wastewater-related real property, personal property, accounts, plants, assets, franchises, rights and privileges, including, without limitation lands, buildings, pipes, collections systems, pump stations, tools, equipment, and apparatus, held by the town of Tiverton. The district shall assume all outstanding liabilities, debts, bonds, notes, and other wastewater obligations of the town of Tiverton. The Tiverton town council is hereby authorized to assign, sell, lease, or otherwise transfer the same to the district. The district shall not assume responsibility over the town of Tiverton's storm water system.” and

WHEREAS, the Town desires to implement an orderly transition from the Town to the District of the operation and maintenance of the sewer maintenance, including the transfer of the Town’s assets and liabilities pursuant to Section 16 of the Act.

NOW THEREFORE, IT IS HEREBY RESOLVED, by the Town Council of Tiverton that:

1. The Town shall transfer its sewer assets and liabilities to the District as soon as practically feasible, with the goal of such transition to be completed by September 2, 2014, consistent with the following parameters.
2. The sewer lines (other than the Mt. Hope Interceptor), the pumping station equipment, the miscellaneous assets located at the Judson Street Community Center, and the 1999 Ford 250 Truck with its associated equipment, as itemized in the email memo and attached spreadsheet of John Lincourt, dated July 7, 2014, shall be transferred by bill or bills of sale.
3. The miscellaneous assets itemized in the email memo and attached spreadsheet of John Lincourt, dated July 7, 2014, with the remark “Clerk –Tax office claims this,” shall not be transferred unless further investigation provides documentation that they were acquired with Wastewater Management Commission funds.

4. The land under the pump stations shall be transferred by deed or easement, following examination of the title to determine the estate by which the Town currently holds such land.
5. The Mt. Hope Interceptor and the Foote Street Meter, as itemized in the email memo and attached spreadsheet of John Lincourt, dated July 7, 2014, shall be transferred by lease with appropriate covenants and safeguards to the Town. The rent shall be \$1.00 per year for approximately 10 years, with the District responsible for all maintenance thereto, except damage payable from the Erosion Reserve Account (discussed below). The consent of the Bank of New York as Trustee and Washington Trust Company as bondholder shall be obtained prior to execution of such lease. At such time as the TIF Bonds which financed such assets are paid in full, such assets shall be conveyed to the District by bill of sale for \$1.00 together with all liabilities thereto.
6. The Erosion Reserve Account of not less than \$400,000., as required to be maintained in perpetuity by the RI CRMC, shall not be transferred to the District at this time. If consent is obtained from RI CRMC and the Town is released from all liability thereby, then such Erosion Reserve Account shall be transferred to the District to maintain as a perpetual reserve account at the same time that the Mt. Hope Interceptor and the Foote Street Meter are transferred to the District after the TIF Bonds are paid in full.
7. The balance of funds in Account #280, of approximately \$175,000 as of 06/30/2014, shall be transferred to the District as follows. \$50,000 shall be transferred as soon as the Treasurer is satisfied that an appropriate deposit account has been established with a financial institution. An additional \$50,000 shall be transferred within thirty days of the first transfer. The remaining funds shall be transferred by September 15, 2014, or as soon thereafter as the Treasurer is satisfied that there are no remaining liabilities outstanding, or shall hold back from such final transfer the funds necessary to pay any outstanding liabilities.
8. The balance of funds in hand for Community Development Block Grants ("CDBG") shall be accounted for by the Treasurer and any such funds allocated for sewer related work shall be transferred to the District, upon the written consent of the State of Rhode Island.
9. The balance of "Awarded" funds for Community Development Block Grants ("CDBG") shall be accounted for by the Treasurer and any such awards allocated for sewer related work shall be assigned to the District, upon the written consent of the State of Rhode Island.
10. The Town Administrator is hereby authorized to execute deeds, easements, bills of sale, and any other instruments of transfer and/or security as necessary to implement this Resolution, and as approved as to form by the Town Solicitor pursuant to Charter Section 803.
11. The Town Treasurer is hereby authorized to execute all financial transfers, whether by check or wire or electronic transfer as necessary to implement this Resolution, and as approved as to form by the Town Solicitor pursuant to Charter Section 803.

Adopted by the Town Council on the 21st day of July, 2014.

Nancy Mello, Town Clerk